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1876

CHARTER

OF

BOWDOIN COLLEGE,

AND

OTHER DOCUMENTS.

25-1427

CHARTER

OF

BOWDOIN COLLEGE,

TOGETHER WITH

VARIOUS ACTS OF THE LEGISLATURE;

ALSO AN ABSTRACT OF THE

DECISION OF THE CIRCUIT COURT,

IMPORTANT VOTES OF THE BOARDS, AND THE BY-LAWS OF THE OVERSEERS.

BRUNSWICK:
A. G. TENNEY, PRINTER.
1876.

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In Brun

BOWDOIN COLLEGE

CTW - Mar. 5, 1925

Act of Incorporation.

An Act to establish a College in the town of Brunswick, in the District of Maine, within this Commonwealth.

College established

Sec. 1. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That there be erected and established in the town of Brunswick, in the District of Maine, a College for the purpose of educating youth, to be called and known by the name of Bowdoin College, to be under the government and regulation of two certain bodies politic and corporate, as hereafter in this Act is provided.

Persons incorporated as Trustees.

Sec. 2. *And be it further enacted by the authority aforesaid*, That the Rev. Thomas Brown, Rev. Samuel Dean, D. D., John Frothingham, Esq., Rev. Daniel Little, Rev. Thomas Lancaster, Hon. Josiah Thatcher, and David Mitchell, Esquires, Rev. Tristram Gilman, Rev. Alden Bradford, Thomas Rice, Esq., and Mr. William Martin, together with the President and Treasurer of the said College, for the time being, to be chosen as in this Act is hereafter directed, be and hereby are created a body politic and corporate, by the name of *The President and Trustees of Bowdoin College*, and that they and their successors, and such others as shall be duly elected members of the said corporation, shall be and remain a body politic and corporate, by that name forever.

Their powers.

Sec. 3. *And be it further enacted by the authority aforesaid*, That for the more orderly conducting the business of the said corporation, the President and Trustees shall have full power and authority, from time to time, to elect a Vice-President and Secretary of the said corporation, and to declare the tenures and duties of their respective offices; and also to remove any Trustee from the same corporation, when, in their judgment,

he shall be rendered incapable by age, or otherwise, of discharging the duties of his office, or shall neglect or refuse to perform the same; and to fill up all vacancies in the said corporation, by electing such persons for Trustees as they shall judge best: *Provided nevertheless*, That the number of the said Trustees, including the President and Treasurer of the said College, for the time being, shall never be greater than thirteen, nor less than seven.

Proviso.

Sec. 4. *And be it further enacted*, That the said corporation may have one common seal, which they may change, break, or renew, at their pleasure; and that all deeds signed and delivered by the Treasurer, and sealed with their seal, by order of the President and Trustees, shall, when made in their corporate name, be considered in law as the deeds of the said corporation; and that the said corporation may sue and be sued in all actions, real, personal or mixed; and may prosecute and defend the same to final judgment and execution, by the name of the *The President and Trustees of Bowdoin College;* and that the said corporation shall be capable of holding, having and taking in fee simple, or any less estate, by gift, grant, devise, or otherwise, any lands, tenements, or other estate, real or personal: *Provided nevertheless*, That the annual clear income of the same shall not exceed the sum of *ten thousand pounds.*

All transactions in their name to be legal.

Proviso.

Sec. 5. *And be it further enacted by the authority aforesaid*, That the said corporation shall have full power and authority to determine at what times and places their meetings shall be holden, and on the manner of notifying the trustees to convene at such meetings, and also from time to time, to elect a President and Treasurer of the said College, and such Professors, Tutors, Instructors, and other officers of the said College as they shall judge most for the interest thereof, and to determine the duties, salaries, emoluments, and tenures of their several offices aforesaid: (The said President for the time being, when elected and inducted into his office, to be, *ex officio*, President of the said corporation) and also to purchase, or erect and keep in repair such houses and other buildings as they shall judge necessary for the said College; and also to make and ordain, as occasion may

Authorized to appoint meetings, officers, &c.

require, reasonable rules, orders, and by-laws, not repugnant to the laws of this Commonwealth, with reasonable penalties, for the good government of said College; and also to determine and prescribe the mode of ascertaining the qualifications of the students requisite to their admission; and also to confer such degrees as are usually conferred by Universities established for the education of youth; and a majority of the members of said corporation, present at any legal meeting, shall decide all questions which may properly come before the said Trustees: *Provided nevertheless*, That no corporate business shall be transacted at any meeting, unless seven, at least, of the Trustees are present: *And provided further*, That the said corporation shall confer no degrees other than those of Bachelor of Arts and Master of Arts, until after the first day of January, which will be in the year of our Lord one thousand eight hundred and ten. Proviso.

Sec. 6. *And be it further enacted by the authority aforesaid*, That the clear rents, issues and profits of all the estate, real and personal, of which the said corporation shall be seized or possessed, shall be appropriated to the endowment of the said College, in such manner as shall most effectually promote virtue and piety, and the knowledge of such of the languages and of the useful and liberal arts and sciences, as shall hereafter be directed, from time to time, by the said corporation. Appropriation.

And more effectually to provide for the wise and regular government of said College, and for the prudent administration of the funds belonging to it, by establishing a supervising body with proper powers;

Sec. 7. *Be it further enacted by the authority aforesaid*, That no election made by the said corporation, either of Trustees to fill up vacancies, or of President or Treasurer of the said College, nor any vote or order of the said corporation to remove any Trustee or any officer of the said College, or to purchase or erect any house or other building for the said College, or to determine what officers shall be established for the said College, or the duties, salaries, emoluments or tenures of such officers, or for the appropriation of any of their funds or monies, or for the acceptance of any estate, when the donation thereof was made

No transaction of the corporation to have any effect, unless agreed to by the Overseers.

upon condition, or for determining the qualifications for the students requisite to their admission, or for the conferring of any degrees, or for the making, altering, amending or repealing any rules, orders or by-laws for the government of the said College, shall have any force, effect or validity, until the same shall have been agreed to by the Overseers of the said Bowdoin College hereafter in this Act created.

Josiah Thacher, Esq., authorized.

SEC. 8. *And be it further enacted by the authority aforesaid*, That the HON. JOSIAH THACHER, Esq. be, and he is hereby authorized and empowered to fix the time and place for holding the first meeting of the said Trustees, and to notify each of said Trustees thereof, in writing.

And for the establishing of the supervising body with proper powers above mentioned.

Overseers incorporated.

SEC. 9. *Be it further enacted by the authority aforesaid*, That Edward Cutts, Thomas Cutts, Simon Frye, David Sewall and Nathaniel Wells, Esquires, Rev. Moses Hemmenway, D.D., Rev. Silas Moody, Rev. John Thompson, Rev. Nathaniel Webster, Rev. Paul Coffin, Rev. Benjamin Chadwick, Rev. Samuel Eaton, Rev. Samuel Foxcroft, Rev. Caleb Jewett, Rev. Alfred Johnson, Rev. Elijah Kellog, Rev. Ebenezer Williams, Rev. Charles Turner, Daniel Davis, Samuel Freeman, Joshua Fabyan, William Gorham, Stephen Longfellow, Joseph Noyes, Isaac Parsons, Robert Southgate, John Wait, Peleg Wadsworth, and William Widgery, Esquires, Rev. Ezekiel Emerson, Jonathan Ellis, Jonathan Bowman, Edmund Bridge, Daniel Cony, Henry Dearborn, Dummer Sewall, Samuel Thompson, John Dunlap, Francis Winter, Nathaniel Thwing, Alexander Campbell, and Paul Dudley Sargeant, Esquires, together with the President of the College, and the Secretary of the Corporation, first created in this Act, for the time being, be and they are hereby created a body politic and corporate by the name of *The Overseers of Bowdoin College*, and that they, their successors, and such others as shall be duly elected into the said corporation of Overseers, shall be and remain a body politic and corporate, by that name forever.

SEC. 10. *And be it further enacted by the authority aforesaid*, That the members of said corporation of Overseers may

have one common seal, which they may change, break and renew at their pleasure, and that they may sue or be sued, prosecute and defend unto final judgment and execution, by the name of *The Overseers of Bowdoin College.* ——— may have a seal and prosecute and defend.

Sec. 11. *And be it further enacted by the authority aforesaid*, That for the orderly conducting the business of the said last mentioned corporation, the members thereof shall have full power from time to time, as they shall determine, to elect a President, Vice-President and Secretary, and to fix the tenures and duties of their respective offices; and also, to determine at what times and places their meetings shall be holden, and upon the manner of notifying the Overseers to convene at such meetings; and also to remove any Overseer from the said corporation when in their judgment he shall be rendered incapable, by age or otherwise, or shall neglect or refuse to discharge the duties of his office, and also to fill up all vacancies in the said corporation of Overseers, by electing such persons for Overseers as they shall judge best qualified therefor; and a majority of the members present, at any legal meeting, shall decide all questions which may properly come before the said Overseers: *Provided nevertheless*, That the number of the said Overseers, including the President of the College, and the Secretary of the corporation last above created, shall never be greater than forty-five, nor less than twenty-five. Coporation empowered for the orderly conducting the business. Proviso.

Sec. 12. *And be it further enacted by the authority aforesaid*, That the Overseers of said Bowdoin College shall have power to agree or disagree to any election, vote, order or act of the President and Trustees of said College, where the agreement of said Overseers is made necessary by this Act to give force, effect and validity to such election, vote, order or act; and they are hereby directed to notify the said President and Trustees of such agreement or disagreement, in convenient time thereafter; and the said Overseers are also empowered to call upon any Treasurer of the said College, his executors and administrators, to render to them a just and true account of all the doings of such Treasurer, in his said office, as often as the said Overseers shall direct: *Provided nevertheless*, That no corporate business shall Overseers shall have power to agree or not, respecting any transactions of the President and Trustees. Proviso.

be transacted at any meeting of the Overseers aforesaid, unless fifteen of them, at least are present.

Treasurer to give bond.

SEC. 13. *And be it further enacted by the authority aforesaid*, That the Treasurer of the said College shall, before he enter upon the execution of the duties of his office, give bond to the said Overseers, in such penalty, and with such sureties, as they shall approve of, conditioned for the faithful discharge of the duties of the said office, and for rendering a just and true account of his doings therein, when required, and that all the monies, securities, and other property of the President and Trustees of Bowdoin College, together with all the books in which his accounts and proceedings, as Treasurer, were entered and kept, that appertain to his office of Treasurer as aforesaid, shall, upon demand made upon him, his executors or administrators, be paid and delivered over to his successor in that office; and all monies to be recovered by virtue of any suits at law, upon such bond, shall be paid over to the President and Trustees aforesaid, and subjected to the appropriations above directed in this Act.

Places of Trustee and Overseer cannot be held together.

SEC. 14. *And be it further enacted by the authority aforesaid*, That no Trustee of the said College, excepting the President and Secretary, first above mentioned, shall be an Overseer of the said College; and if any Trustee (excepting as aforesaid) shall be chosen an Overseer, he shall cease to be a Trustee immediately upon his accepting the place of an Overseer; and if any Overseer of the said College (excepting as aforesaid) shall hereafter be elected a Trustee, he shall cease to be an Overseer, upon his accepting the place of a Trustee.

David Sewall, Esq., authorized to call first meeting.

SEC. 15. *And be it further enacted by the authority aforesaid*, That the Hon. DAVID SEWALL, Esq. be, and he hereby is authorized and empowered to fix the time and place of the first meeting of the Overseers of said Bowdoin College, and to notify the said Overseers thereof by publishing the same three weeks successively in each of the Portland newspapers; the last publication to be made three weeks, at least, before the time fixed for the said meeting.

SEC. 16. *And be it further enacted by the authority aforesaid*, That the Legislature of this Commonwealth may grant any

further powers to, or alter, limit, annul or restrain any of the powers by this Act vested in the said corporation, as shall be judged necessary to promote the best interest of the said College.

Legislature to alter or restrain powers of the corporation.

Sec. 17. *And be it further enacted by the authority aforesaid*, That there be and hereby is granted five townships of land of the contents of six miles square each, to be laid out and assigned from any of the unappropriated lands belonging to this Commonwealth, in the District of Maine, the same to be vested in the Trustees of Bowdoin College, and their successors forever, for the use, benefit and purpose of supporting the said College, to be by them holden in their corporate capacity, with full power and authority to settle, divide and manage the same townships, or any part thereof, or to sell, convey and dispose of the same in such way and manner as shall best promote the welfare of said College, the same to be laid out under the direction of the committee for the sale of eastern lands, and a plan or plans thereof returned into the Secretary's office: *Provided*, The Trustees aforesaid, or their assigns, shall cause to be settled fifteen families in each of said townships within twelve years from the passing this act: *And provided also*, There shall be reserved in each township three lots of three hundred and twenty acres each, for the following uses, *viz.* one lot for the first settled Minister — one lot for the use of the Ministry — and one lot for the use of schools in each of said townships

Lands granted to the Trustees to be at their disposal.

Proviso.

[This Act passed June 24, 1794.]

Tenure of President's Office.

In the Board of Trustees, November 4, A. D. 1801.

Voted, That the tenure of the office of the President of Bowdoin College shall be during good behavior.

Voted, That in addition to the salary of the President, there shall be provided for him a suitable dwelling house with its appurtenances at the expense of the College.

Attest, Charles Coffin, Secretary.

In the Board of Overseers, November 4, 1801, the foregoing votes, having been twice read, were agreed to.

Attest, Mark L. Hill, Secretary.

Extract from the Constitution of Maine.

"*Seventh.* All grants of land, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet located which have been or may be made by the said Commonwealth, before the separation of said District shall take place, and having or to have effect within the said District, shall continue in full force, after the said District shall become a separate State. But the grant which has been made to the President and Trustees of Bowdoin College, out of the tax laid upon the Banks within this Commonwealth, shall be charged upon the tax upon the Banks within the said District of Maine, and paid according to the terms of said grant; and the President and Trustees, and the Overseers of said College, shall have, hold and enjoy their powers and privileges in all respects; so that the same shall not be subject to be altered, limited, annulled or restrained, except by judicial process, according to the principles of law; and in all grants hereafter to be made by either State, of unlocated land within the said District, the same reservations shall be made for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by this Commonwealth. And all lands heretofore granted by this Commonwealth, to any religious, literary, or eleemosynary corporation, or society, shall be free from taxation, while the same continues to be owned by such corporation, or society."

Consent of College to alterations in the Charter.

In the Board of Trustees of Bowdoin College, May 17, 1820.

Voted, That the Rev. Pres. Allen and Hon. Samuel S. Wilde be a committee, with such as the Board of Overseers may join, to make application to the Legislature of the State of Maine to aid the Funds of this Institution by continuing to them the present annual allowance from the tax on the Banks of Maine, and for such other donations as they in their wisdom may be disposed to make.

And whereas the said Legislature are restrained by the Constitution of the State of Maine from making any donation, grant

or endowment, unless the said Legislature shall have at the time of making such endowments, the right to grant any further powers, to alter, limit or restrain any of the powers vested in this Institution as shall be judged necessary to promote the best interests thereof—Therefore *Voted*, That the consent of this Board be given, that such right may be vested in the Legislature of this State, and that the said committee be authorized on behalf of this Institution to take such measures as may be necessary to vest such right in the said Legislature, so as to enable them to make the endowment hereby prayed for, or any further endowments which they in their bounty may be disposed to make.

Sent to the Board of Overseers for agreement.

BENJ. ORR, Secretary.

Board of Overseers—read, agreed to, and Hon. Messrs. Parris, Woodbury, and Ames are joined.

JOS. MCKEEN, Secretary.

COMMONWEALTH OF MASSACHUSETTS.

Resolve on the petition of the Trustees and Overseers of Bowdoin College, June 12, 1820.

Whereas by an Act of this Commonwealth, entitled "An Act relating to the separation of the District of Maine from Massachusetts Proper, and forming the same into a separate and independent State," it is provided among other things, in the terms and conditions set forth in the first Section of said Act, that the President and Trustees and Overseers of Bowdoin College shall have, hold and enjoy their powers and privileges in all respects, so that the same shall not be subject to be altered, limited, annulled, or restrained, except by judicial process, according to the principles of Law; and whereas the Trustees and Overseers of said College have applied to the Legislature of this Commonwealth for its consent to such a modification of the provision above referred to, relating to said College, as would enable the Legislature of the State of Maine to make donations, grants and endowments

to said College, which it is apprehended by said Trustees and Overseers cannot now be made, consistent with a certain provision, or restriction, contained in the Constitution of the State of Maine; Therefore

Resolved, That the consent and agreement of the Legislature of this Commonwealth be and the same is hereby given to any alteration or modification of the aforementioned clause or provision in said Act, relating to Bowdoin College, not affecting the rights or interest of this Commonwealth, which the President and Trustees, and Overseers of said College, or others having the authority to act for said Corporation, may make therein, with the consent and agreement of the Legislature of said State of Maine, and such alterations or modifications made as aforesaid, are hereby ratified on the part of this Commonwealth.

STATE OF MAINE.

An Act to modify and limit the terms and conditions of the Act for separation, relative to Bowdoin College, and encourage Literature, and the Arts and Sciences.

Be it enacted by the Senate and House of Representatives, in Legislature assembled, That provided the Legislature of the Commonwealth of Massachusetts shall agree thereto, the President and Trustees and the Overseers of Bowdoin College, having already assented thereto, the terms and conditions mentioned in the Act of the Commonwealth of Massachusetts, passed on the nineteenth day of June, in the year of our Lord one thousand eight hundred and nineteen, entitled "An Act relating to the separation of the District of Maine from Massachusetts Proper, and forming the same into a separate and independent State," be, and they hereby are so far modified, limited or annulled, as that the said President and Trustees, and the Overseers of Bowdoin College shall have, hold and enjoy their powers and privileges in all respects, subject however, to be altered, limited, restrained or extended by the Legislature of the State of Maine, as shall by the said Legislature be judged necessary to promote the best interests of said Institution.

[This Act passed June 16, 1820.—Special Laws, Vol. 1, p. 8.]

An Act to alter the law establishing Bowdoin College.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That the number of Trustees provided for in an Act to establish a College in the town of Brunswick, including the President of said College, shall never be less than twenty nor more than twenty-five, and no corporate business shall be transacted at any meeting, unless thirteen at least of the Trustees are present; and the number of Overseers provided for in said Act, including the President of said College, shall never be less than forty-five, nor more than sixty: and the Secretary of the corporation of Trustees shall not be an Overseer, and the Treasurer of said College shall not be a Trustee nor an Overseer.

Board of trustees to consist of not more than 25 nor less than 20.

Thirteen to constitute a quorum.

Board of overseers not more than sixty nor less than forty-five.

SEC. 2. *Be it further enacted*, That all vacancies which shall hereafter exist in the corporation of Trustees, or in the corporation of Overseers, shall be filled in manner prescribed by an Act to establish a College in the town of Brunswick, at the annual meetings of said corporations respectively in the month of September, and at no other time: *Provided*, That the Governor and Council be, and they hereby are authorized, and empowered within six months after the passing of this Act, to appoint twelve persons to be Trustees, and fifteen persons to be Overseers of said College, and to fill such vacancies in the corporation of Overseers as shall be created by any Overseer or Overseers being appointed by the Governor and Council, a Trustee or Trustees.

Vacancies to be filled according to the charter at annual meeting in September.

Governor and Council in six months to appoint 12 trustees and fifteen overseers, and to fill vacancies in overseers' board occasioned by choosing an overseer as trustee.

[This Act passed March 19, 1821.—Special Laws, Vol. 1, p. 93.]

An additional Act respecting Bowdoin College.

Be it enacted by the Senate and House of Representatives, in Legislature assembled, That at any regular meeting of the corporation of Trustees of Bowdoin College, any nine members of said corporation shall constitute a quorum for the transaction of the business of said corporation; and that all vacancies which

Number of trustees necessary to form a quorum;

Vacancies in the board of trustees and overseers, how filled

shall hereafter exist in the corporation of Trustees, or in the corporation of Overseers, may be filled in manner prescribed by "An Act to establish a College in the town of Brunswick," at the annual meetings of said corporations respectively, any law to the contrary notwithstanding.

[This Act passed February 8, 1822.—Special Laws, Vol. 1, p. 197.]

An Act additional to "An Act to alter the law establishing Bowdoin College."

The Governor to be a member of the board of trustees *ex officio*.

Be it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor of the State of Maine, for the time being, shall, by virtue of his office, be a member of the Board of Trustees of Bowdoin College: And if, by reason of his accession, the number of Trustees shall be increased beyond twenty-five, they shall, notwithstanding such increase, remain in office, until, by the happening of a vacancy, they shall be reduced to the number by law established.

[Approved Feb. 27, 1826.—Special Laws, Vol. 1, p. 671.]

An Act respecting Colleges.

No person now holding the office of President in any College shall hold the same beyond the next commencement of the College, unless re-elected.

Two-thirds of all votes given in each board necessary to elect, or reelect a President.

The President may be removed by the board, or the boards, which shall elect him.

Sec. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That no person now holding the office or place of President in any College in this State, shall hold said office or place beyond the day of the next Commencement of the College, in which he holds the same, unless he shall be re-elected. And no person shall be elected or re-elected to the office or place of President unless he shall receive in each board two-thirds of all the votes given on the question of his election. And any person elected to said office or place after the passing of this Act, shall be liable to be removed, at the pleasure of the Board of Trustees, or Board of Trustees and Overseers, which shall elect him.

Sec. 2. *Be it further enacted*, That the fees, paid by any person for any diploma, or for any medical or academical degree, granted or conferred by the government of either of the Colleges in the State, shall be paid into the Treasury for the use of the College; and no part thereof shall be received by any officer of the College, as a perquisite of office.

Fees shall be paid into the treasury for use of the College.

No officer to receive any part of such fees, as a perquisite of office.

[Approved March 31, 1831.—General Laws, Vol. 3, p. 371.]

Extract from the Revised Statutes, page 172.

Sec. 56. The tenure of office of the President of each college, in this State, shall be such, that he shall be removable, at any time, at the pleasure of the trustees and overseers, whose concurrence is necessary for an election to the same office.

Tenure of office of Presidents of colleges. 1831, 517, § 1.

Sec. 57. All fees paid by any person for any diploma, or any medical degree, granted or conferred by either of the colleges in this State, shall be paid into the treasury for the use of such college; and no part thereof shall be received, as a perquisite of office, by any officer of the college.

Graduation fees to be paid into college treasuries. 1831, 517, § 2.

An Act to establish a Medical School in this State.

Sec. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That there be and hereby is established, under the control, superintendence and direction of the President and Trustees and Overseers of Bowdoin College, a Medical School for the instruction of students in Medicine, Anatomy, Surgery, Chemistry, Mineralogy and Botany.

School under direction of president, &c., of Bowdoin College.

Sec. 2. *Be it further enacted*, That the said President and Trustees and Overseers of Bowdoin College be, and they hereby are authorized to appoint, and it shall be their duty to appoint, as soon as may be, learned Professors of Medicine, Anatomy, Surgery, Chemistry, Mineralogy and Botany, who shall deliver regular lectures in their respective branches at such times as the corporation shall prescribe.

Professors to be appointed, &c.

Sec. 3. *Be it further enacted*, That there be and hereby is granted to the President and Trustees and Overseers of Bowdoin College for the benefit of the said Medical School, and for procuring the necessary books, plates, preparations and apparatus, the sum of fifteen hundred dollars, to be paid out of the Treasury of this State, out of any monies not otherwise appropriated by law; and the further sum of one thousand dollars annually until the Legislature shall otherwise order and direct.

Amount of grants.

[This Act passed June 27, 1820.—Special Laws, Vol. 1, p. 23.]

An Act to encourage Literature and the useful Arts and Sciences.]

Sec. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That there be and hereby is granted to the President and Trustees and Overseers of Bowdoin College the sum of three thousand dollars annually from and after the fourteenth day of February, which shall be in the year of our Lord eighteen hundred and twenty-four, until the term of seven years therefrom, shall be complete and ended, to be paid in semi-annual payments out of the treasury of this State from monies arising from the tax on certain Banks not otherwise appropriated.

Grant to Bowdoin College.

[This Act passed June 28, 1820.—Special Laws, Vol. 1, p. 23.]

CIRCUIT COURT OF THE UNITED STATES.

SPRING CIRCUIT.

MAINE, MAY TERM, 1833, AT PORTLAND.

BEFORE { Hon. JOSEPH STORY, Associate Justice of the Supreme court.
Hon. ASHUR WARE, District Judge.

WILLIAM ALLEN *v.* JOSEPH MCKEEN.

[In this case certain important points were decided, of which an extract only is given. The whole opinion of the court can be found in the authorized Reports.]

A college, merely because it receives a charter from the government, though founded by private benefactors, is not thereby constituted a public corporation controllable by the government; nor does it make any difference, that the funds have been generally derived from the bounty of the government itself.

The visitatorial power is a mere power to control and arrest abuses, and to enforce a due observance of the Statutes of a charity; it is not a power to revoke the gift, to change its uses, or to divest the rights of the parties entitled to the bounty.

The visitatorial power is an hereditament founded in property, and valuable in the intendment of law; and where it is vested in trustees, there can be no amotion of them from their corporate capacity, and no interference with the just exercise of their authority, unless it is reserved by the Statutes of the foundation or charter. The trustees are, however, subject to the general superintendence of a Court of Chancery for any abuse of their trust.

Bowdoin College is a private, and not a public, corporation, of which the Commonwealth of Massachusetts was founder, and the visitatorial and all other powers, franchises, and rights of property of the College are vested in the Boards of Trustees and Overseers, established by the Charter, who have a permanent right and title to their offices, which cannot be divested, except in the manner pointed out in the Charter.

In the Charter of the College, (§ 16) it is declared, that the Legislature "may grant further powers to, or alter, limit, annul, or restrain any of the powers by this Act vested in the said corporation, *as shall be judged necessary to promote the best interest of the College.*" Under this clause the authority of the Legislature of the State of Maine is confined to the enlarging, altering, annulling, or restraining of the powers of the corporation, and does not extend to any intermeddling with its *property*, or extinction of its corporate existence.

By the Act of Separation of Maine from Massachusetts, the powers and privileges of the President, Trustees, and Overseers of the College, are guaranteed under the charter, so that they cannot be altered, limited, annulled, or restrained, except by judicial process, according to the principles of law, unless that Act has been modified by the subsequent agreement of both States. Afterwards the Legislature of Massachusetts passed a Resolve, "That the consent and agreement of this Commonwealth be, and the same is hereby, given to any alteration or modification of the abovementioned clause or provision in said Act, relating to Bowdoin College, *not affecting the rights or interests of this Commonwealth*, which the President, and Trustees, and Overseers of the said College, or others having authority to act for said corporation, *may make therein*, with the consent of the Legislature of said State of Maine; and such alterations or modifications, made as aforesaid, are hereby ratified on the part of this Commonwealth." This resolve does not authorize the Legislature of Maine to make alterations in the College charter, which shall divert the funds of the founder from their original objects, or vest the visitatorial power in any other bodies, or persons, than the Trustees and Overseers, marked out in the original charter; and, *a fortiori*, it does not justify the transfer of these powers from the Trustees to any other persons not in privity with them.

According to the foregoing Resolve, the alterations and modifications are to be made by the Boards of the College, or by their agents, with the consent of the Legislature, and not by the Legislature, without their consent.

The terms of ratification in the foregoing Resolve, being *in præsenti*, it seems that they cannot be applicable to all possible alterations in all future times.

By the terms of the Act of Separation of Maine from Massachusetts, no modification of it can be made, except *by the subsequent agreement of the Legislatures of both States.* To effect this agreement, there must be a concurrence of the Legislatures of both States *ad idem*, that is,

an express assent to some specific proposition. Therefore the Act of Maine of the 16th March, 1820, which was never responded to by the Legislature of Massachusetts, and which in its terms does not look to any antecedent Resolve of Massachusetts, (the foregoing Resolve of Massachusetts was passed four days previous) but expressly looks to some future act or assent of Massachusetts, is not a sufficient compliance with the articles of separation.

By the Act of Maine of the 16th of June, 1830, it is enacted, that "the President and Trustees, and the Overseers of Bowdoin College, shall have, hold, and enjoy their powers and privileges in all respects, subject, however, to be altered, restrained, or extended by the Legislature, &c., as shall, &c., be judged necessary to promote the best interests of said Institution." This cannot be construed to include an authority to annul the *charter*, or the corporation created by it, or the Institution itself, or to create new Boards, in whom the corporate powers and privileges may be vested; or to transfer to other persons the powers and privileges of the old Boards; or to add new members to the Board by the nomination of the Legislature, or by that of the Governor and Council of the State. The Act of the 19th of March, 1821, enlarging the Boards, the Act of the 27th of February, 1826, making the Governor, *ex officio*, a member of the Board of Trustees, and the Act of the 31st of March, 1831, declaring, that no person holding the office of President in any college in the State, should hold his office beyond the day of the next Commencement of the college, and altering the tenure of their offices, are therefore unconstitutional.

Where the Boards voted, that they "*acquiesced*" in an Act of the Legislature, it was *held*, that this did not import an assent on their part; and, farther, that their approval could not give effect to an unconstitutional Act.

Where a person holds an office *during good behavior*, with a fixed salary and certain fees annexed thereto, the tenure of the office cannot be altered without impairing the obligation of a contract. Therefore, the Act of the Legislature of Maine of 1831, removing President Allen from the office of President, and establishing a different tenure for the office, is contrary to the Constitution of the United States.

Where one man receives money, which ought to be paid to another, or belongs to another, an action of money had and received will lie in favor of him, to whom of right the money belongs; and this, notwithstanding it may involve a trial of the title to an office, if the party has once been in possession.

Records of the Board of Overseers of Bowdoin College.

Consequent upon the decision of the case of Allen *v.* McKeen, the following votes have been passed by the Board of Overseers of Bowdoin College.

Sept. 3, 1834. Whereas in the Act of Incorporation of the Trustees and Overseers of Bowdoin College, it is enacted, that the President of the College, and the Secretary of the Board of Trustees shall be, *ex officio*, members of the Board of Overseers, and that the number of said Overseers, including said President and Secretary, shall never be greater than forty-five; and whereas it has been decided by the Court of Law having jurisdiction over the subject, that the Act passed March 19, 1821, entitled an Act to alter the Law establishing Bowdoin College, is unconstitutional, null and void; and whereas there is now, including the persons appointed to be Overseers by virtue of said last mentioned Law, and by elections made by this Board, a greater number than forty-five, therefore, *Voted*, That it does not appear that there are any existing vacancies in the Board of Overseers, which can be filled by an election.

Voted, That the number of Overseers, including the President of the College, and the Secretary of the Trustees, ought not to be greater than forty-five.

Voted, That a Committee be appointed to report the names of those who are legally members of the Board of Overseers, and if a larger number than forty-five are found to be members of the Board, to report a plan by which the number may be reduced to forty-five, including those who are members *ex officio*, and to report at the next meeting of the Board.

Voted, That the visiting committee, viz. Messrs. Evans, Daveis and Wm. Cutter, be the committee for the above purposes.

Sept. 1, 1835. In accordance with the resolutions adopted at the last meeting,

Resolved, That appointments of members of the Board, made by the Governor and Council in pursuance of the Act of March 19, 1821, are invalid and confer no right to seats in this Board.

Resolved, That elections made at any time when the Board consisted of the full number of forty-five, including the President of the College and Secretary of the Trustees, are invalid and confer no right to seats.

Resolved, That the persons whose names are borne on Schedule F., herewith submitted by the committee, being together with the President and Secretary of the Board of Trustees forty in number, are members of the Board, and that five vacancies now exist to be filled by election, together with such other vacancies as have occurred since the last meeting.

Sept. 6, 1837. Whereas the Charter establishing the College expressly provides, that no election made by the Board of Trustees to fill any vacancy in said Board, shall have any force, effect, or validity, until the same shall have been agreed to by the Overseers—Therefore

Resolved, That this Board cannot acknowledge any person as having a right to a seat in the Board of Trustees of this College, who has not been elected to that station by a concurrent vote of this Board.

Resolved, That in the appointment of joint Committees, this Board do not by such act necessarily acknowledge the individuals appointed on the part of the Trustees, as members of the Board.

Resolved, That the Secretary of this Board be directed to furnish the Board of Trustees with a copy of these Resolutions.

True copy. J. McKeen, Secretary.

TENURE OF THE PRESIDENT'S OFFICE.

In the Board of Trustees of Bowdoin College, Sept. 6, 1838,

Voted, That the tenure of office of the President of Bowdoin College be and the same hereby is declared to be for and during the pleasure of the Boards of Trustees and Overseers.

Provided, nevertheless, That no removal of the President shall take place by vote of the Boards without previous notice, first given to the incumbent, and an opportunity be afforded him to be heard if he think proper.

And it shall be the duty of the Secretary of each Board to notify the members of their respective Boards of the time assigned for such hearing, to the end that members may all be present if they see fit.

All questions of Removal shall be decided by Yeas and Nays, entered on the record.

Sent to the Board of Overseers for agreement.

EBENEZER EVERETT, Secretary.

In the Board of Overseers of Bowdoin College, Sept. 6, 1838.

Read twice, and agreed to.

ROBERT D. DUNNING, Secretary.

True copy. JOHN MCKEEN, Secretary.

VOTES OF THE BOARDS.

July 13, 1869, *Voted*, That the President of the College with the concurrence of the Visiting Committee, or in case of the inability of the President to act, the Visiting Committee, may call special meetings of the two Boards of the College, specifying in the notice to members, the object for which the meeting is called.

Voted, That any member who shall hereafter neglect to attend two stated meetings successively without giving under his hand in writing, a satisfactory excuse for his absence, shall be considered as having voluntarily vacated his seat, and the vacancy so happening shall be filled without delay; unless in the interval between the said meetings, he shall have attended, either a special meeting of the Boards or a public examination on a committee for that purpose, in either of which cases such attendance shall be deemed equivalent to an attendance on a stated meeting.

July 13, 1874, *Voted*, That No. 38 of the College rules be as follows: Term Bills are due at the close of each Term, and if not paid at the commencement of the next term, interest shall be charged at current rates. No Student shall be admitted to a higher class until all his term bills are paid, except in special cases by permission of the President and Trustees. If payment is unreasonably delayed, the Treasurer shall put the Bond in suit.

On the fifteenth day after the commencement of each term the Treasurer shall send to the Faculty a list of delinquents, and no person on such list shall be allowed to attend recitations until his dues are paid.

July 14, 1874, *Voted*, That the annexed report and the Rules recommended therein be made a part of the By-Laws of the College, from and after the 15th day of June next.

The report referred to in the above vote is as follows:

The committee appointed to revise the Laws relating to the finances and the expenditure ask leave to report the following:

The Treasurer upon entering upon the discharge of the duties of his office shall give bond as required by the Charter of the College, and by vote of the Overseers in the sum of Twenty-five Thousand Dollars, which bond shall be in the custody of the Secretary of said Board.

The Treasurer shall have the charge and custody of all the moneys, stocks, notes, bonds, securities and other evidence of property belonging to or held in trust by the College, and shall keep the same in some safe place of deposit, easily accessible for examination, and shall keep in his office a record or list of such deposits. The Finance Committee shall annually within ten days previous to Commencement, and at such other times as they may deem necessary make an examination of all such property of the College, and compare the same with the Treasurer's accounts and lists, and if found to agree therewith, shall give to the Treasurer a certificate of the same and shall also report to the Trustees and Overseers the result of their examination.

All gifts, donations, bequests and other moneys, received as a part of the funds of the College, or as trust funds, shall be invested by the Treasurer under the advice of the Finance Committee in safe and profitable securities and in accordance with the condition accompanying the gift, if any, and a report of such investments, with the sources from which such funds were derived, shall be reported to the Boards at their next annual meeting.

The Treasurer shall collect all interest, dividends, rents, income, tuition and other dues to the College and its trust funds, and shall disburse the same in payment of the expenses and indebtedness of the College and votes of the Trustees and Overseers. He shall annually, one week before Commencement, make a report to the Finance Committee containing the following items,

viz., an abstract of the receipts and expenditures of the College for the last year, designating the amounts spent under each appropriation, the amounts due the College from students and graduates, designating what is due from those of each year separately, and all other dues to the College from whatever source, and all sums due from the College; a statement of the funds and property of the College held for general College purposes, and of the funds held in trust for specific purposes with the income derived from each, a statement of the amount insured on the several College buildings and property, an estimate of the receipts for the coming year and of the expenditure that will probably be required under the several heads of appropriation.

The Treasurer shall annually, prior to the Commencement, make up a statement of his accounts with the College, and submit the same to the Finance Committee with the proper evidence of payment; and said committee shall examine the same and compare said statement with his books and certify and allow said account, so far as they shall find it to be correct and duly authorized and vouched; said Committee shall also examine all the other named statements and estimates of the Treasurer and shall report the same in an abstract thereof to the Boards and to the Visiting Committee at their meeting previous to Commencement. On the basis of these reports, and in view of the wants of the College, the Visiting Committee shall recommend such appropriations under the hereinafter mentioned heads as they shall deem necessary.

At every annual meeting the Boards shall vote the appropriation for the current year under the following heads, and no money shall be drawn or paid from the treasury except by virtue of the same or of some special appropriation as herein-after provided: For Salaries, Special Instruction, Scientific Department, Gymnasium, Repairs and Insurance, Grounds, Fuel, Printing and Advertising, Chemicals, Stationery &c., Incidentals, Library, Contingent Expenses.

Special appropriations or additions to the general appropriations may be made at the annual meeting or at any special meeting called for that purpose.

The appropriations voted by the Boards shall in no case be exceeded. The expenditure of the appropriations, shall be made by the Treasurer, except those for the Library and contingent expenses, which shall be under the direction of the Faculty, to be drawn on the order of the President, stating under what appropriation it is drawn, and in each case the expenditure is to be charged to the appropriation under which it is drawn. Special appropriations, unless otherwise directed in the vote authorizing the same, shall be expended under the direction of the Treasurer.

The use and control of the rooms and buildings of the College shall be under the direction of the Faculty, but the Treasurer shall have the custody of the same. He shall employ some suitable person as Carpenter and Janitor who shall, under the Treasurer, have the care of the College buildings and grounds, and shall repair and keep in order the same and see that the recitation rooms, Library and Chapel are properly heated and lighted, and shall perform such other duties as the Treasurer may designate. He shall report to the Treasurer all damages to the rooms or buildings or other College property, with the names of the occupants of the rooms damaged and of the person by whom said damages were committed, if known to him. The Treasurer may also employ additional assistance for the above purpose if found necessary.

The Treasurer shall purchase such stationery, chemicals and other materials as may be needed in the instruction of the classes, and shall deliver the same to the instructors or officers under whose direction these are to be used, taking a receipt therefor, and shall keep an account of all such purchases, and of the person to whom, and purposes for which delivered, which record shall be examined by the Finance Committee, and the bills for the purchase of the same approved, if found correct.

The Treasurer shall report to the Faculty at the close of the first term of each year the names of those students who have failed to present the bonds required by the college laws, and shall also seasonably report the names of those who are delinquent in the payment of their Term Bills.

All officers or other persons having charge of the expenditure of money under the several appropriations or otherwise, shall render an account of such expenditure, accompanied with the proper vouchers, to the Finance Committee at least one week before Commencement, who shall audit the same, and report to the Boards at the annual meeting.

It shall be the duty of the Professors having charge of the Instruments, Chemicals and other College property used in the course of Instruction, with the Treasurer, to make an inventory of the same at the commencement of the year, and the Professors shall give to the Treasurer their respective receipts for that which shall be by them received subject to use and ordinary wear and tear.

The foregoing amendments to the By-Laws shall take effect from and after the next Commencement.

STANDING RULES AND ORDERS

OF THE

OVERSEERS OF BOWDOIN COLLEGE.

Art. 1.—All Elections by this Board, or in agreement with the Trustees, shall be made by ballot.

Art. 2.—The President, Vice President, and Secretary shall be elected at the stated meeting on the day before Commencement, and shall hold, each, his office for the term of two years.

Art. 3.—The Secretary shall be sworn to the faithful discharge of the duties of his office, and shall receive for his services twenty dollars a year He shall keep a fair record of the votes and transactions of the Overseers, and also an *orderly book*, in which he shall insert their *rules* and *orders*, and a list of the names of the members, designating the times of their commencing and ceasing to be members. He shall record the names of the members present at every meeting; and make report on record, at the opening of each stated meeting, of the number of vacancies, and the names of those, whose seats may be then vacant. He shall notify the stated meetings, and also a special meeting, when requested by any five members in writing, expressing the time, place and purposes of holding the meeting.

Art. 4.—There shall be one stated meeting of the Overseers in each year; namely, on the Tuesday before Commencement, at two o'clock in the afternoon. Special meetings may be called and notified by the President, and by the President of the College, and may be called by any five members, by application to the Secretary in writing, expressing the time, place, and purposes for holding the meeting.

Art. 5.—Stated and special meetings of this Board shall be notified by the Secretary, and it shall be his duty to serve a notice to each member of this Board informing him of the time and place of meeting, at least fourteen days before the time when said meeting is called; no business shall be acted upon at any special meeting, unless fully expressed in the notification for the meeting.

Art. 6.—When a quorum of the Board shall be assembled, the meeting shall be opened with prayer by some one of the reverend clergy, if any be present; this service shall be performed in the order, to be made and notified by the Secretary; and, after a quorum be formed, no member shall absent himself without leave.

Art. 7.—When a question is debated, every member, desiring to speak, shall rise and address himself to the President, or, in his absence, to the Vice President, and shall sit down as soon as he has done speaking.

Art. 8.—No member, while speaking, shall be interrupted by another, except to call to order, or to correct a mistake; and no member shall speak more than twice to one question, without first obtaining leave of the Board, until the other members, who shall not have spoken, shall speak, if they desire it.

Art. 9.—Vacancies shall be filled by the written votes of a majority of the members present; and a nomination list shall be made of the names of the candidates, and, if more than one vacancy is to be filled, the number of candidates to be chosen shall be taken from the nomination list, and balloted for, separately.

Art. 10.—Any member, who shall neglect to attend two stated meetings, successively, without giving under his hand in writing a satisfactory excuse for his absence, shall be considered as having voluntarily vacated his seat, and the vacancy, so happening, shall be filled without delay; unless in the interval between the said meetings he shall have attended either a special meeting of the Board, or a public examination, on a committee for that purpose; in either of which cases such attendance shall be deemed equivalent to an attendance on a stated meeting.

Art. 11.—The communication with the Board of Trustees shall be by message, to be delivered by such persons, as the President, and, in his absence, the Vice President, shall appoint.

Art. 12.—No vote or order of the Trustees shall be agreed to, or disagreed to, by this Board, until the same shall have been twice read.

Art. 13.—When a written vote, message or order of the Trustees shall be communicated, it shall be entered on the Secretary's minutes, and as soon as the vote of agreement, or disagreement, shall have been taken and recorded, the said vote, message, or order shall be returned to the Trustees, with the vote of agreement or disagreement entered thereupon, and certified by the Secretary. Provided however, that when such written message or order shall be too long for immediate transcription and recording, the Secretary shall forthwith certify to the Trustees the agreement or disagreement of this Board to the same, to be returned when recorded.

Art. 14.—This Board will not concur with the Trustees in passing any account by them allowed, unless such account have attached a certificate from the committee of accounts, that the same has been examined by them, and found to be a just account.

Art. 15.—All nominations of committees in this Board shall be made by the presiding officer.

Art. 16.—The time for filling vacancies in this Board shall be at 8½ o'clock on the morning of each Commencement day; at which time that business shall be taken up in preference to any other, and the Board shall then proceed to finish the same, unless, for reasons entered of record, two thirds of the members present shall vote to postpone the same to a future time.

Art. 17.—Whenever any vote, on concurring with the Board of Trustees in conferring any honorary degree, be taken in this Board, the same shall be taken by written ballot.

Art. 18.—Every member present, when a question is put, where he is not excluded by interest, shall vote, unless the Board for special reasons shall excuse him.

Art. 19.—The President shall declare all votes, either in the affirmative or negative, as shall appear to him to be true; but if the vote be doubted, he shall make it certain, by again putting the question, and the members for, and against it, when called to vote, shall rise and stand until they are counted.

Art. 20.—No vote by ballot, nor a vote doubted, shall be considered as decided, unless a quorum of the Board shall have voted thereon.

Art. 21.—Whenever a person shall be elected a member of this Board, it shall be the duty of the Secretary to notify him of his election, and request an answer; and if he fail to signify his acceptance before the next annual meeting, or to attend said meeting, his seat shall be considered vacant, and shall be accordingly filled.

Concurrent vote of the Boards, July 13, 1869.

"*Voted*, That the President of the College, with the concurrence of the Visiting Committee, or in case of the inability of the President to act, the Visiting Committee, may call Special meetings of the two Boards of the College, signifying in their notice to members the object for which the meeting is called."

[The above is not specifically an amendment of the rules of the Overseers, but seems to modify portions of Arts. 4 & 5.]

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